

City of Detroit

CITY COUNCIL

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TO: The Honorable City Council

FROM: David Whitaker
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DATE: April 5, 2005

RE: **PROPOSED DETROIT LAND BANK AUTHORITY**

At the Honorable City Council's request, the Research & Analysis Division (RAD) was requested to clarify the necessity for the adoption of an ordinance, resolution or intergovernmental agreement (IGA). This report addresses the question presented by providing background information, outlining issues raised at the discussion on March 17th, and outlining the documents necessary for the formation of a Detroit Land Bank Authority (DLBA).

The Administration proposes the formation of a DLBA pilot project as a three phase process: (1) formation of the DLBA and selection of the Board, (2) Board to create the articles & by-laws, and (3) transfer of City land to the DLBA. The proposed pilot period is only two years from the effective date. Is that enough time to prepare the documents, transfer the land, and allow time for the DLBA to operate so that it can be properly evaluated by the community and local government? If the City decides to withdraw from the DLBA or not transfer any additional parcels of City land, the entity has the ability to continue and obtain land through alternative mechanisms. Due to the complex nature and sophistication of the land bank issue, including the details of formation, a two-year pilot may not provide adequate time for a thorough assessment.

In addition to the 3-page summary proposal, the Administration's Taskforce provided sample legal documents for the creation of a Detroit Land Bank Authority (DLBA). These documents (sample IGA and by-laws) are the enabling documents that are submitted to the State Land Bank Authority and create the DLBA upon execution and filing. The sample documents provided were circulated as a CPC discussional report on February 11, 2005, with the draft of the Administration's proposal. Although the documents are not "official" or "final" they are very useful in identifying and defining issues that are sufficiently ripe for analysis.

The IGA creates the land bank authority and sets forth its powers. It also serves to outline the structure of board, governance, etc. Therefore, they are usually very broad so that the entity is not restricted. However, due to the restrictions imposed upon local governments in the land bank

legislation, the IGA that the Law Department is preparing for submission should be carefully reviewed to ensure that this Honorable Body's concerns are addressed or incorporated if necessary. This review will serve to maintain the close relationship with City government that is a focus of the Administration's proposal.

The by-laws are provisions adopted to regulate internal governance (e.g. meetings, quorum, notice, conflict of interest, committees). Typically they specify the number and duties of directors and govern how the business is operated. State law determines the exact requirements governing by-laws.

Articles of Incorporation are also required for the formation of the DLBA. The Articles set forth the basic terms of a corporation's existence such as its purposes and duration.

Due to the powers exercised by the Board (i.e. fiscal, policy, personnel, contracting for services) the composition of the Board is a key factor. With the Administration's proposal, the Director of CPC is the only specified individual representing this Honorable Body. As with virtually any Board created, their primary responsibility is a fiduciary one to the entity for which they serve. They are obliged to conduct the activities and affairs of the DLBA in the best interests of the Authority.

It is prudent to reiterate that any safeguards must be incorporated into the enabling documents or Council will not have any input or oversight (if any is desired) over the DLBA. As indicated in our August 4, 2004 report, the legislation is clear and precise in restricting any local government control over land bank authorities. Section 124.764 states:

(1) In the exercise of its powers and duties under this act and its powers relating to property held by the authority, the authority shall have complete control as fully and completely as if represented a private property owner and *shall not be subject to restrictions imposed on the authority by the charter, ordinances and resolutions of a local unit of government.*

(2) Unless permitted by this act or approved by an authority, any restrictions, standards, conditions, or prerequisites of a city, village, township, or county otherwise applicable to an authority enacted after the effective date of this act shall not apply to an authority. *This subsection is intended to prohibit special local legislation or ordinances applicable exclusively or primarily to an authority and not to exempt an authority from laws generally applied to other persons or entities.*

(3) *The provisions of this act apply notwithstanding any resolution, ordinance, or charter provision to the contrary.* This section is not intended to exempt an authority from local zoning or land use controls, including, but not limited to, those controls authorized under the city and village zoning act, the local historic district act or the blighted area rehabilitation act (citation omitted).

(Emphasis added)

Initial suggestions and topics for further dialogue derived from the discussion on March 17th include:

- City Council included as part of policy discussions as elected representatives of residents.
- Expand the proposed seven-member board by two (2) members to include City Council members or their representatives selected by majority vote of the members serving. Including additional local community representatives as Board members was also proposed.
- Board members to be appointed by the Mayor with the advice and consent of Council per the proposal. There are many options to determine board appointments. Some include:
 - Formalize or clarify for Council involvement on the “advice and consent” language.
 - Split appointments between the Council and the Mayor.
- Terms of Board members and removal mechanisms (removal only for cause or that members serve at the pleasure of the appointing authority).
- Clarification of removal provisions based on the final mechanism for selection of board members. Input from the City on removal? Consensus for removal between Council and the Mayor? Removal of member at the end of the tenure of the appointing authority? Relationship between appointments and the end of terms.
- Board vacancies will also be determined based on the final mechanism for selection of members.
- Residency considerations for board members.
- Benchmarks for evaluation of City-owned properties to be conveyed. Factors for selection of areas and projects.
- Mechanisms for addressing the issue of the land bank not operating in the best interest of the City of Detroit.
- Potential for the City to recoup for the value of land transferred. How does the transfer of land for no consideration or future consideration interact with lending of municipal credit issues and the responsibility of the City to obtain fair market value for its property assets?
- Additional information regarding a reversion clause and appeal procedure for land sale decisions.
- Incorporation of commercial development and small business concerns.
- Relationship between the DLBA and P&DD. Retention of planning function by the City.
- Impacts of restructuring of P&DD on land sale process.
- Differentiate between the tools the land bank could use and the tools available to the City.

- Incorporate owner-occupied foreclosure prevention and homesteading to DLBA activities.
- Consideration of both large and small-scale developments.
- Advocacy groups and individual community members should have mechanism for DLBA to address their concerns so that the Authority represents the City of Detroit and not outside interests.

To conclude, an IGA is required between the State of Michigan and the City of Detroit. The IGA must be approved by both the Administration and City Council. It is recommended that an ordinance be utilized to approve the creation of the DLBA through the execution of the IGA. An ordinance for this purpose would be a more formal and stable vehicle than a resolution. The contents of the IGA could also be reiterated in the ordinance to ensure that the terms are clear and precise. Any other ordinances or resolutions adopted would have no impact on the DLBA since the legislation precludes local control by any other mechanisms other than the enabling documents.

There are additional resources available to the DLBA. For example, a Charles Stewart Mott Foundation grant will enable the Genesee County Land Reutilization Council (GCLRC) to assist five municipalities in setting up land banks in the State of Michigan. These grants came out of discussions with the Governor's office to share the expertise of those working in Genesee County. The GCLRC is working with the Vacant Land Consortium and other national organizations to put together a technical assistance plan to travel to and evaluate municipalities and help implement the fast track legislation. They have a formal RFP out for the selection process for the five municipalities. The Technical Assistance on Land Bank Implementation Project will select the municipalities to receive assistance from the GCLRC project leadership team. They have indicated that Detroit is a special case and plan to work with the DLBA apart from the grants that will be awarded.